

118TH CONGRESS
1ST SESSION

S. 1718

To amend the Safe Drinking Water Act to clarify the requisite timeline for making a decision on the approval or disapproval of a State underground injection control program, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MAY 18, 2023

Mr. SULLIVAN (for himself, Ms. LUMMIS, and Mr. RICKETTS) introduced the following bill; which was read twice and referred to the Committee on Environment and Public Works

A BILL

To amend the Safe Drinking Water Act to clarify the requisite timeline for making a decision on the approval or disapproval of a State underground injection control program, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Primacy Certainty Act
5 of 2023”.

1 **SEC. 2. STATE PRIMARY ENFORCEMENT RESPONSIBILITY**
 2 **FOR CLASS VI WELLS.**

3 (a) AMENDMENTS.—Section 1422(b) of the Safe
 4 Drinking Water Act (42 U.S.C. 300h–1(b)) is amended—

5 (1) in paragraph (2)—

6 (A) by striking “(2) Within ninety days”
 7 and inserting the following:

8 “(2) REQUIRED TIMELINE.—

9 “(A) IN GENERAL.—Within 90 days”; and

10 (B) by adding at the end the following:

11 “(B) NOTICE RELATED TO STATE PRIMARY
 12 ENFORCEMENT RESPONSIBILITY FOR CLASS VI
 13 WELLS.—

14 “(i) DEFINITION OF CLASS VI
 15 WELL.—In this subparagraph, the term
 16 ‘Class VI well’ has the meaning given the
 17 term in section 40306(a) of the Infrastruc-
 18 ture Investment and Jobs Act (42 U.S.C.
 19 300h–9(a)).

20 “(ii) NOTICE TO STATE.—If the Ad-
 21 ministrator does not approve, disapprove,
 22 or approve in part and disapprove in part
 23 the State’s underground injection control
 24 program for Class VI wells by not later
 25 than 180 days after the date on which the
 26 application of the State is submitted under

1 paragraph (1)(A) or notice of the State is
 2 submitted under paragraph (1)(B), the Ad-
 3 ministrator shall transmit to the State, in
 4 writing, a detailed explanation that de-
 5 scribes—

6 “(I) the status of the review of
 7 the application or notice, as applica-
 8 ble;

9 “(II) the reason for which a deci-
 10 sion with respect to that application
 11 or notice has not yet been made; and

12 “(III) an itemized list of specific
 13 deficiencies with the application or no-
 14 tice to be addressed to receive ap-
 15 proval of that application or notice, in
 16 accordance with the requirements of
 17 this title.

18 “(iii) AUTOMATIC APPROVAL FOR
 19 CLASS VI WELLS.—

20 “(I) IN GENERAL.—If the Ad-
 21 ministrator has not approved, dis-
 22 approved, or approved in part and dis-
 23 approved in part a complete applica-
 24 tion submitted under paragraph
 25 (1)(A) or notice submitted under

1 paragraph (1)(B) of a State’s under-
2 ground injection control program to
3 regulate Class VI wells in writing by
4 not later than the date that is 30 days
5 after the end of the 180-day period
6 described in clause (ii), that applica-
7 tion or notice shall be considered ap-
8 proved by the Administrator if the
9 State has established and imple-
10 mented a primary enforcement au-
11 thority program for 1 or more other
12 classes of underground injection con-
13 trol wells (including adequate record-
14 keeping and reporting) to prevent un-
15 derground injection that endangers
16 drinking water sources.

17 “(II) DETERMINATION OF COM-
18 PLETENESS.—

19 “(aa) DEADLINE.—The Ad-
20 ministrator shall determine
21 whether an application submitted
22 under paragraph (1)(A) or notice
23 submitted under paragraph
24 (1)(B) is complete for purposes
25 of subclause (I), and provide no-

1 tice to the State of any defi-
2 ciencies in that application or no-
3 tice, by not later than 10 days
4 after the date on which the State
5 submits the application or notice.

6 “(bb) FAILURE TO MAKE
7 DETERMINATION CONCERNING
8 COMPLETENESS OF CLASS VI PRI-
9 MACY APPLICATION OR NO-
10 TICE.—If the Administrator has
11 not made a determination under
12 item (aa) by the end of the 10-
13 day period described in that sub-
14 clause, on request of the State
15 that submitted the application or
16 notice, the application or notice
17 shall be considered administra-
18 tively complete.

19 “(C) PENDING PERMITS AND APPLICA-
20 TIONS FOR CLASS VI WELLS.—With respect to
21 Class VI wells (as defined in subparagraph
22 (B)(i)) and the efforts of a State to obtain from
23 the Administrator primary enforcement respon-
24 sibility of Class VI wells (as so defined), fol-
25 lowing the approval of an application under

1 paragraph (1)(A) or notice under paragraph
2 (1)(B) for a State, the Administrator shall, as
3 expeditiously as possible—

4 “(i) render a decision on any pending
5 permits or applications for the operation of
6 Class VI wells (as so defined) in the State
7 prior to that State assuming primary en-
8 forcement responsibility for Class VI wells
9 (as so defined); and

10 “(ii) transfer to that State all pending
11 permits, applications, and other informa-
12 tion relevant to operating an underground
13 injection control program to regulate Class
14 VI wells (as so defined) not already in pos-
15 session of the State following that State
16 assuming primary enforcement responsi-
17 bility for Class VI wells (as so defined).

18 “(D) GROUNDS FOR DENIAL OF CLASS VI
19 WELL APPLICATIONS.—A denial or approval in
20 part and disapproval in part with respect to an
21 application or notice of a State to operate an
22 underground injection control program to regu-
23 late Class VI wells (as defined in subparagraph
24 (B)(i)) shall be based solely on a finding by the

1 Administrator that the State does not meet the
 2 criteria described in paragraph (1)(A).

3 “(E) NO CONDITIONS FOR DECISIONS.—

4 The Administrator shall not condition the ap-
 5 proval of an application or notice of a State to
 6 operate an underground injection control pro-
 7 gram to regulate Class VI wells (as defined in
 8 subparagraph (B)(i)) on the inclusion of—

9 “(i) provisions not otherwise included
 10 in the application or notice on the date of
 11 submission; or

12 “(ii) any other provision not otherwise
 13 explicitly required by this title.”; and

14 (2) by adding at the end the following:

15 “(4) PREAPPLICATION ACTIVITIES FOR CLASS
 16 VI WELLS.—With respect to Class VI wells (as de-
 17 fined in paragraph (2)(B)(i)) and the efforts of a
 18 State to obtain from the Administrator primary en-
 19 forcement responsibility of Class VI wells (as so de-
 20 fined), the Administrator, acting through the indi-
 21 vidual designated under paragraph (5), shall work as
 22 expeditiously as possible with States to complete any
 23 necessary activities prior to the submission of an ap-
 24 plication under paragraph (1)(A) or notice under
 25 paragraph (1)(B), taking into consideration the need

1 for a thorough and detailed application or notice, as
2 applicable.

3 “(5) APPLICATION COORDINATION FOR CLASS
4 VI WELLS.—With respect to underground injection
5 control programs of States, or portions of under-
6 ground injection control programs of States, that
7 regulate Class VI wells (as defined in paragraph
8 (2)(B)(i)), the Administrator shall designate 1 indi-
9 vidual to be responsible for coordinating for each
10 State—

11 “(A) in accordance with paragraph (4), the
12 completion of any necessary activities prior to
13 the submission of an application submitted
14 under paragraph (1)(A) or notice submitted
15 under paragraph (1)(B);

16 “(B) the review of an application sub-
17 mitted under paragraph (1)(A) or notice sub-
18 mitted under paragraph (1)(B); and

19 “(C) the hiring of any additional staff nec-
20 essary to carry out subparagraphs (A) and (B).

21 “(6) EVALUATION OF RESOURCES.—Not later
22 than 90 days after the date of enactment of this
23 paragraph, the Administrator, in consultation with
24 the individual designated under paragraph (5), shall
25 submit to the Committees on Environment and Pub-

1 lic Works and Appropriations of the Senate and the
2 Committees on Energy and Commerce and Approp-
3 riations of the House of Representatives a report
4 that describes—

5 “(A) the availability of staff and resources
6 to promptly carry out the requirements of the
7 amendments made by section 2(a) of the Pri-
8 macy Certainty Act of 2023; and

9 “(B) any funding necessary to promptly
10 carry out the requirements of the amendments
11 made by section 2(a) of the Primacy Certainty
12 Act of 2023.”.

13 (b) USE OF IIJA FUNDS.—

14 (1) USE FOR REPORT.—Amounts made avail-
15 able to carry out section 40306(b) of the Infrastruc-
16 ture Investment and Jobs Act (42 U.S.C. 300h-
17 9(b)) may, beginning on the date of enactment of
18 this Act, be used to carry out paragraph (6) of sec-
19 tion 1422(b) of the Safe Drinking Water Act (42
20 U.S.C. 300h-1(b)).

21 (2) CONFORMING AMENDMENT.—Section
22 40306(b) of the Infrastructure Investment and Jobs
23 Act (42 U.S.C. 300h-9(b)) is amended by inserting
24 “(including carrying out paragraph (6) of section
25 1422(b) of the Safe Drinking Water Act (42 U.S.C.

1 300h–1(b)) in accordance with section 2(b)(1) of the
2 Primacy Certainty Act of 2023))” after “2010))”.

3 (c) RULES OF CONSTRUCTION.—

4 (1) DEFINITIONS.—In this subsection:

5 (A) ADMINISTRATOR.—The term “Admin-
6 istrator” means the Administrator of the Envi-
7 ronmental Protection Agency.

8 (B) CLASS VI WELL.—The term “Class VI
9 well” has the meaning given the term in section
10 40306(a) of the Infrastructure Investment and
11 Jobs Act (42 U.S.C. 300h–9(a)).

12 (2) ABILITY TO DENY OR WITHDRAW STATE
13 PRIMARY ENFORCEMENT RESPONSIBILITY.—Nothing
14 in the amendments made by this section limits the
15 ability of the Administrator—

16 (A) to deny an application under para-
17 graph (1)(A) of subsection (b) of section 1422
18 of the Safe Drinking Water Act (42 U.S.C.
19 300h–1) or notice under paragraph (1)(B) of
20 that subsection of a State to operate an under-
21 ground injection control program to regulate
22 Class VI wells; or

23 (B) to revoke primary enforcement respon-
24 sibility in accordance with that Act (42 U.S.C.
25 300f et seq.).

1 (3) APPLICABILITY TO NEW SUBMISSIONS.—

2 The amendments made by this section shall apply to
3 all applications under paragraph (1)(A) of sub-
4 section (b) of section 1422 of the Safe Drinking
5 Water Act (42 U.S.C. 300h–1) and notices under
6 paragraph (1)(B) of that subsection for underground
7 injection control programs of States, or portions of
8 underground injection control programs of States,
9 that regulate Class VI wells submitted to the Admin-
10 istrator pursuant to that section on and after the
11 date of enactment of this Act.

12 (4) APPLICABILITY TO PRIOR SUBMISSIONS.—

13 With respect to applications under paragraph (1)(A)
14 of section 1422(b) of the Safe Drinking Water Act
15 (42 U.S.C. 300h–1(b)) and notices under paragraph
16 (1)(B) of that section for underground injection con-
17 trol programs, or portions of underground injection
18 control programs, that regulate Class VI wells that
19 were submitted to the Administrator, but not ap-
20 proved, before the date of enactment of this Act—

21 (A) the 180-day period described in para-
22 graph (2)(B)(ii) of that section shall begin on
23 the date of enactment of this Act; and

24 (B) the Administrator shall process and
25 make decisions, pursuant to the requirements of

1 this Act and the amendments made by this Act,
2 on those applications and notices in the order
3 in which the applications and notices were sub-
4 mitted.

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